

Practice Update

CFPB and CSBS Provide Additional Guidance Regarding CARES Act Mortgage Forbearance

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The Consumer Financial Protection Bureau and the Conference State Bank Supervisors issued joint guidance to mortgage servicers clarifying the forbearance provision of the Coronavirus Aid, Relief and Economic Security (CARES) Act. Our alert about consumer finance provisions of the CARES Act is available [here](#).

Section 4022 of the CARES Act permits a borrower with a federally backed mortgage loan who is experiencing a financial hardship due to COVID-19 to request forbearance from his or her lender. Upon receiving the borrower's attestation regarding his or her financial hardship, lenders and servicers are required to grant forbearance for up to 180 days regardless of delinquency status. The joint guidance seeks to clarify observed or anticipated actions by mortgage servicers concerning this provision:

180 Day Default Forbearance. The statutory language allows for a forbearance period of "up to" 180 days. Servicers can grant forbearance for less than 180 days at a borrower's request or with a borrower's consent. If a borrower and servicer cannot agree on an appropriate forbearance term or servicer cannot reach the borrower due to the circumstances, servicers must default to the term requested by the borrower or 180 days.

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Proof of Hardship Cannot be Required. Borrowers do not need to prove financial hardship to qualify for forbearance. The exclusive requirement for forbearance under the CARES Act is the borrower's attestation of hardship. Accordingly, servicers may not require information supporting the need for forbearance, but they may work with borrowers to better understand their financial situation as long as (i) borrowers are not misled or dissuaded from seeking forbearance and (ii) any information obtained does not affect the servicer's forbearance.

Compliance. Servicers and originators cannot refuse to provide forbearance if requested in accordance with the CARES Act (*e.g.* unilaterally determining borrower does not need forbearance, issuing closing attestation at loan origination discouraging future requests for forbearance, etc.). Examiners will evaluate communications between borrowers and their servicers or originators to see if servicers attempted to steer borrowers away from requesting CARES Act forbearance.

Closing Attestations. Examiners will review mandatory closing attestation to see if originators are requiring statements from borrowers designed to dissuade them from later requesting CARES Act forbearance.

The joint guidance also referred to other helpful guidance including from the GSEs, FHA, VA, and other regulators. Our alerts regarding other CARES Act guidance are available [here](#).

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